HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. V.SEETHAPATHY

Writ Appeal No.822 of 2006

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Between:

Subash Neemkar and five others

……Appellants

And

The Regional Joint Commissioner of Endowments,
MZ-III, Hyderabad and four others

……Respondents

:: JUDGMENT ::

Counsel for the Appellants : Shri M.Vidya Sagar

Counsel for Respondent Nos.1 to 3 : Government Pleader for Endowments

Counsel for Respondent No.4 : Sri Janaki Rami Reddy for Sri E.Ayyapu Reddy

Counsel for Respondent No.5 : None

September 04, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 24-01-2006 passed by the learned Single Judge in Writ Petition No.19145 of 2004 whereby he nullified orders dated 18-8-2004 and 5-10-2004 passed by Deputy Commissioner of Endowments (respondent No.2) and Regional Joint Director of Endowments, Multi-Zone-III, Hyderabad (respondent No.1) respectively, but directed the Commissioner of Endowments to appoint a senior officer to supervise opening of the hundis in the presence of the present custodian and the petitioners, counting of cash and deposit thereof in a separate bank account and also directed that the petitioners would be permitted to withdraw money from the bank account only on the basis of written authorization of such senior officer and that too for meeting the immediate essential expenditure.

The appellants claim to be founder trustees of Hanuman Temple situated in Sanath Nagar, Hyderabad. The temple was classified under Section 6 (c) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act'). That was challenged by the appellants in Writ Petition No.3071 of 2004, which was disposed of by an order dated
1-4-2004 with liberty to the appellants to raise a dispute under Section 87 of the Act. Thereafter, the appellants filed O.A.No.21 of 2004 before respondent No.2 for grant of a declaration that the temple is not a public religious institution and the provisions of the Act cannot be applied to it. During the pendency of the O.A., Sanath Nagar Youth Welfare Association, Sanath Nagar (respondent No.4 herein) filed two interlocutory applications. In one of the applications, respondent No.4 prayed for impleadment as party to the O.A. In the second application,

respondent No.4 prayed for appointment of an officer of the department to manage the affairs of the temple. Copies of both the interlocutory applications were served on the counsel for the appellants on 18-8-2004 and, on the same day, respondent No.2 allowed one of the interlocutory applications i.e. I.A.No.79 of 2004 and appointed Executive Officer of Sri Hanuman Temple, Vijayanagar Colony, Hyderabad (respondent No.5) as custodian of Hanuman Temple near Allwyn Factory, Sanath Nagar. Respondent No.2 also directed the custodian to take over the complete charge of the records, accounts and properties of the temple from the appellants herein and to ensure that the day-to-day affairs of the temple are administered properly.

The appellants challenged the order of respondent No.2 by filing revision petition under Section 92 of the Act. The same was dismissed by respondent No.1 vide his order dated 5-10-2004. The appellants then filed writ petition under Article 226 of the Constitution of India for quashing orders dated 23-8-2004 and 5-10-2004. One of the grounds taken by the appellants for questioning the legality of the orders passed by respondent Nos.2 and 1 respectively was that they had not been given effective opportunity to contest I.A.No.79 of 2004 filed by respondent No.4. The learned Single Judge adverted to the pleadings of the parties and arguments of their advocates and held that order passed by respondent No.2 is liable to be nullified on the ground of violation of the rules of natural justice. However, instead of restoring the possession of the appellants, as it was obtaining on the date of passing of order dated 18-8-2004, the learned Single Judge directed the Commissioner of Endowments to appoint a senior officer for supervising the administration of the temple.

Sri M. Vidya Sagar, learned counsel for the appellants argued that the direction given by the learned Single Judge for appointment of a senior officer to supervise the administration of the temple is liable to

be set aside because there is no provision in the Act under which the Court can issue such direction.

Learned Government Pleader and counsel representing respondent No.4 supported the direction given by the learned Single Judge by contending that the same is in public interest.

We have considered the respective submissions and are convinced that the direction given by the learned Single Judge for appointment of a senior officer to supervise the affairs of the temple (administration as well as financial) is legally untenable and is liable to be set aside. Under Section 87 (2) of the Act, the Deputy Commissioner can, during the pendency of the application filed under sub-section (1), pass appropriate order, but, in the present case, the Deputy Commissioner concerned did not exercise the power vested in him under Section 87 (2) and ordained appointment of senior officer to supervise the administration of the temple. There is no provision in the Act under which the Court can ordain appointment of an officer to supervise the administration and affairs of an institution. Therefore, while nullifying orders dated 18-8-2004 and 5-10-2004 passed by respondent Nos.2 and 1 respectively on the ground of violation of the rules of natural justice, the learned Single Judge could not have issued the impugned direction and, thereby, deprived the appellants of their right to administer the affairs of the temple. The learned Single Judge could not have usurped the power vested in the Deputy Commissioner and issued the impugned direction in the name of public interest.

In the result, the appeal is allowed. The direction given by the learned Single Judge in the penultimate paragraph of the order under challenge is set aside. The parties are left to bear their own costs.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY,J

31-08-2006
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